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April 25, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Computer III Further Remand Proceeding
CC Docket No. 95-20

Dear Mr. Caton:

For most Bell Operating Company (BOC) interexchange enhanced services, Section 272 of the Telecommunications Act of 1996 imposes a separate subsidiary requirement. MCI Telecommunications Corporation (MCI) supports the continuation of this Commission's structural separation rules for all BOC enhanced services, including those local and interexchange services not covered by Section 272, for the reasons MCI and others have stated in the record of this proceeding.

It should be noted that, even for those BOC enhanced services not covered by Section 272, that provision makes the case for continuation of the structural separation rules much stronger. Once a BOC sets up a separate subsidiary to offer most enhanced services pursuant to the legislation, there will be almost no additional cost in offering all remaining enhanced services through the same subsidiary, thereby tipping the cost-benefit balance much more in favor of structural separation for all BOC enhanced services.

Moreover, the competitive and ratepayer risks of BOC joint services are greater than the BOCs have represented in their comments. Attached are an original and duplicate set of four affidavits by MCI technical experts responding to reply comments filed in this proceeding by Pacific Bell and other BOCs that address the Affidavit of Peter P. Guggina, Director of Technical Standards Management for MCI, which was attached as Exhibit B to MCI's Comments. As explained in the attached affidavits, including one by Mr. Guggina, Pacific Bell and the other BOCs seriously distort the record and unjustifiably impugn Mr. Guggina's credibility, requiring a correction of the misstatements and mischaracterizations in the BOCs' reply

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comments. As the attached affidavits show,^{1/} Mr. Guggina was and is correct that, because of BOC domination, the Information Industry Liaison Committee (IILC) and other similar standards bodies are ineffective in bringing about technical changes sought by other sectors of the telecommunications industry and therefore cannot reasonably be relied upon by the Commission to develop and implement meaningful Open Network Architecture standards.

Also attached are two copies each of the Consent Decree Order settling enforcement issues arising out of a joint federal/state audit of transactions between the Ameritech Operating Companies and their affiliate, Ameritech Services, Inc;^{2/} a Memorandum Opinion and Order authorizing public release of the Joint Audit Report on Ameritech;^{3/} and the Joint Audit Report itself. This joint audit material provides further confirmation of the continuing inadequacy of the Commission's joint cost allocation and other cost accounting rules in preventing cost misallocations and cross-subsidies and the failure of price cap regulation to stem such misbehavior. The most striking aspect of the Report is its admission that, because of a lack of documentation, the auditors were not able to determine the extent of the misallocations, proving once again that after-the-fact audits cannot possibly substitute for structural separation as a safeguard against cross-subsidization. To the same effect is an Order to Show Cause issued against Southwestern Bell based on audit findings of cost misallocations, including misallocations of joint marketing costs, copies of which are also enclosed.^{4/}

More recently the Commission released a summary of its audit of the BOCs' accounting for lobbying costs, copies of which are

^{1/} The other three affidavits are executed by David P. Jordan, Advisory Engineer in Technical Security, Network Systems Engineering; Anthony J. Toubassi, Advisory Engineer in Technical Standards Management; and James Joerger, Senior Engineer, Technical Standards Management.

^{2/} Ameritech, AAD 95-75, FCC 95-223 (released June 23, 1995).

^{3/} Ameritech Telephone Companies Public Release of Information Obtained during Joint Audit, AAD 95-74, FCC 95-222 (released June 23, 1995).

^{4/} Order to Show Cause, Southwestern Bell Tel. Co., AAD 95-32, FCC 95-31 (released March 3, 1995).

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also enclosed. In spite of a finding of \$116.5 million in misclassified lobbying costs during the period from 1988 through 1991, the Commission failed to take any remedial action for the past ratepayer injuries resulting from such misallocations.^{5/} This confirms the inadequacy of the entire cost accounting regulation and audit function, since the BOCs apparently have a "free shot" at any accounting violation they may wish to commit, knowing that the worst that can happen is that someday, if they are caught, they might have to correct such practices on a going-forward basis.

MCI also wishes to take this opportunity to clear up one of the misrepresentations in the Reply Comments of US West, Inc. in this proceeding. On page 10, US West asserts that the Structural Relief Order,^{6/} which granted the BOCs' petitions to be relieved of the structural separation requirement, "remains in full force and effect," in spite of the remand of that order to the Commission by the U.S. Court of Appeals for the D.C. Circuit.^{7/} The Structural Relief Order is of no force and effect because, as set forth in the Joint Motion for Remand of that Order, filed by the Commission and MCI in the Court of Appeals, that order

merely implemented the BOC Safeguards Order by granting structural relief to BOCs who had satisfied the substantive requirements of that order. The [Structural Relief Order] thus provided no independent justification for the removal of the requirement. The Ninth Circuit's decision setting aside the BOC Safeguards Order eliminated the necessary predicate for the [Structural Relief Order]....

In these circumstances, MCI and the Commission agree that the [Structural Relief

^{5/} Commission Releases Summary of Lobbying Costs Audit Findings, Report No. CC 95-65 (released Oct. 26, 1995).

^{6/} Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, 9 FCC Rcd. 3053 (1994).

^{7/} MCI Telecommunications Corporation v. FCC, No. 94-1597 (D.C. Cir. May 10, 1995).

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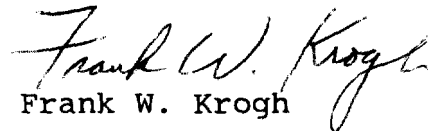
Order] should be remanded to the Commission.^{8/}

It is important to note that US West opposed the Joint Motion for Remand, correctly stating that the Joint Motion "implies that the [Structural Relief Order] has already been invalidated"^{9/} by the Ninth Circuit decision setting aside the BOC Safeguards Order.^{10/} The Joint Motion was granted on May 10, 1995 over US West's objection.^{11/} Thus, there is now no basis for the Structural Relief Order, and it has no remaining legal validity. There is therefore no legal support or justification for the integrated offering of BOC enhanced services, other than the BOC Waiver Order.^{12/}

MCI also notes that the BOCs have filed a number of ex parte letters in this docket in the last several months, none of which appears to raise any points not already fully addressed and rebutted in the comments and reply comments filed by MCI and other parties.

Please include a copy of this letter and a duplicate set of all of the attached material in the public record of this proceeding.

Yours truly,


Frank W. Krogh

Enclosures

^{8/} Joint Motion for Remand at 2-3, MCI Telecommunications Corp. v. FCC, No. 94-1597 (D.C. Cir. March 28, 1995).

^{9/} Opposition to Joint Motion for Remand at 4, MCI Telecommunications Corp. v. FCC, No. 94-1597 (D.C. Cir. April 7, 1995).

^{10/} California v. FCC, 39 F.3d 919 (9th Cir. 1994).

^{11/} See n.7, supra.

^{12/} Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, DA 95-36 (CCB released Jan. 11, 1995).

STATE OF TEXAS)
) ss
COUNTY OF DALLAS)

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APR 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

AFFIDAVIT OF PETER P. GUGGINA

Peter P. Guggina, being duly sworn and under oath, deposes and states
as follows:

1. I am employed by MCI Telecommunications Corporation (MCI) as the Director of Technical Standards Management. My office address is 2400 N. Glenville Drive, Richardson, Texas 75082. In this capacity, I am responsible for managing a staff that plans, coordinates and executes MCI's participation in the industry forums and standards process. My position provides a daily view of the status and events that take place in these arenas. In addition to participating directly in and monitoring other MCI participants' progress, I am in constant contact with other industry participants in an attempt to resolve issues and to make the process more effective.

2. I am also my company's representative to the Board of Directors of the Alliance for Telecommunications Industry Solutions (ATIS), formerly the Exchange Carrier Standards Association (ECSA), which sponsors many telecommunications standards setting bodies and industry forums. In addition, I am

also MCI's representative to the American National Standards Institute (ANSI). I also serve as Chairman of the Carrier Liaison Committee (CLC), which provides oversight management of the ATIS/CLC-sponsored forums. Further, I am Chairman of the Interexchange Carriers Industry Committee (ICIC), an industry group that reviews technical subject matters associated with exchange access services. Chairing the ICIC provides me additional exposure to a cross-section of industry activities related to the forum and standards process. My involvement with these industry activities began in 1984, and I have over 20 years of telecommunications operations, engineering, and network planning experience.

3. I am submitting this affidavit in connection with the Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, in response to incorrect and misleading representations by Bell Atlantic, NYNEX, Pacific Bell, US West, Bellcore, and the US Telephone Association (USTA) as to my previous affidavit in this proceeding, submitted as Exhibit B to MCI's Comments in April 1995. Also, I will discuss the Reply Comments of the Information Industry Liaison Committee (IILC), which were filed in this docket by ATIS. Those Reply Comments inadvertently support the points made in my 1995 affidavit as to the inadequacy of the IILC for any purpose other than just talking about unbundling. If called to testify, I would be competent to testify to the facts stated in this affidavit.

MANY OTHERS ARE EXPERIENCING RBOC ANTICOMPETITIVENESS

4. US West's¹ comments, along with those of the other Regional Bell Operating Companies (RBOCs) and Bellcore noted above, claim, in response to my 1995 affidavit,² that the RBOCs do not exploit the standards process for anti-competitive ends and attempt to discredit the factual testimony presented in my affidavit. However, MCI is not alone in feeling stymied by anti-competitive RBOC and other local exchange carrier (LEC) behavior

5. Darryl Ferguson, President of Citizens Utilities, is quoted as saying that US West delay tactics are "a huge, serious problem". He suggests that US West has repeatedly blocked action on Colorado PUC rulemakings, to further delay competitive entry.³ Mr. Ferguson also adds, "[t]here's no doubt that [U S West Chairman] Dick McCormick made a decision to go slow on competition.'" ⁴

¹ US West, Inc., Reply Comments at 25.

² Affidavit of Peter P. Guggina, included as Exhibit B to MCI Telecommunications Corporation Comments in CC Docket No. 95-20, April 10, 1995, hereinafter referred to as Guggina 1995 Affidavit.

³ "Telco Competitors Attack RHC Local Market Resistance" at ¶ 3, Communications Daily, November 6, 1995, attached as Appendix A.

⁴ "Local Competition: Devil in the Details," America's Network, December 1, 1995, at 32, attached as Appendix B.

6. Thomas Morrow, President of Time Warner Communications, claimed that RBOC resistance is causing competitive access providers to have to work harder to get into the local marketplace. Mr. Morrow specifically identified Ameritech's actions in Ohio, stating “[w]ith Ameritech, you get a big bear hug and after you let go you find a knife in your back’.” He also stated that he would rather face an “‘obviously antagonistic’” US West than deal with Ameritech. Time Warner expects it will still be waiting to provide all services in Ohio more than two years after filing an application.⁵

7. Craig Young, president and COO of Brooks Fiber Networks, stated that the RBOCs' alliance has created a “‘cartel’” to “‘slow roll’” federal reform efforts for local competition.⁶

8. Heather Gold, president of the Association for Local Telecommunications Services (ALTS), is quoted as saying “[w]e must put an end to the gamesmanship that has led to the kind of regulatory slow roll experienced in attempting to open the local markets up to this point’.” Gold also added that the LECs have gained “‘unwarranted regulatory relief’” by citing “‘potential for competition,’” while non-LEC service providers continue to be shut out of markets.⁷

⁵ “Telco competitors,” note 3, supra (Appendix A).

⁶ Id.

⁷ “Independent Telcos Rally for Deregulation at Annual Conference” at ¶¶ 1, 4, Communications Daily, November 3, 1995, attached as Appendix C.

9. The competitive access industry, as noted in the previous paragraph, has expressed serious concerns regarding their experiences with the RBOCs' use of delay tactics associated with opening local competition. Citizens Utilities, Time Warner, Brooks Fiber Networks, and ALTS described instances of RBOC slow rolling, gamesmanship, blocking, resistance, delay, and antagonism. These are the same tactics that I experienced in the standards and industry forums, which I described in my 1995 affidavit.

10. The RBOCs apparently have at least recognized that they have an image problem. BellSouth Chairman John Clendenin, in a keynote speech to the November 1995 USTA convention, stated that “ ‘ [t]his is not the time to circle the wagons’ ” and “ ‘ [i]t would be futile anyway’ ”⁸ Communications Daily reported that at the USTA Convention, “telco executives from big, medium and small companies sent message: Don't fight competition and other changes in the industry because it won't do any good.”⁹ This should be interpreted as merely an attempt to improve their image. Based on my observations, the RBOCs are merely switching from their publicly “antagonistic” mode to more subtle forms of delaying competition, such as using the

⁸ “Telco Executives See Future of Opportunities and Problems” at ¶ 2, Communications Daily, November 7, 1995, attached as Appendix D.

⁹ Id. at ¶ 1.

excuse that their billing and operational support systems cannot readily be adapted to opening competition.

11. The RBOCs often delay implementation of industry agreements for anti-competitive reasons. I will describe another example, involving the exchange of billing information between LECs and competitive local exchange carriers (CLECs). CLECs needed LEC billing information to properly bill their customers. The existing monopoly LECs traditionally exchange this information with other non-competing LECs. However, they refused to provide this information to CLECs, on grounds that it was proprietary, resulting in a competitive burden being placed upon the CLECs. This issue triggered a series of industry forum and association discussions resulting in the offending parties becoming less overtly antagonistic to the CLECs' position on this issue.

12. This Commission as well has recognized that there is a LEC dominance problem, e.g., its decision not to select ATIS as North American Numbering Plan Administrator.¹⁰ The Commission stated "[w]e share the concerns expressed in the comments of the appearance of bias associated with entities such as NECA and ATIS, both of whom historically have been closely associated with LECs."¹¹ The

¹⁰ In the Matter of Administration of the North American Numbering Plan, CC Docket No. 92-237, Report and Order, at ¶¶ 54-59 (released July 13, 1995).

¹¹ Id. at ¶ 57.

Cellular Telephone Industry Association (CTIA) has also observed that "ATIS' governance remains LEC controlled, despite requests from CTIA to broaden its scope."¹² George L. Edwards, President of ATIS, wrote to the Commission in response to CTIA's description of ATIS, explaining that ATIS now allows non-LEC memberships. That may eventually solve the LEC dominance problem, but it will not happen overnight. Also, it is a matter of public record in the North American Numbering Plan proceeding that a large number of non-LECs perceived that ATIS was LEC-controlled.¹³ ATIS is now expanding its membership, which is a positive step towards reducing LEC dominance. As an ATIS board member, I am personally committed to recruiting new ATIS members and working to reduce the membership imbalance. Also, I would like to note that this imbalance does not mean that ATIS itself necessarily acts improperly, but the LEC monopolistic membership imbalance still remains and cannot be ignored.

13. It is thus clear that there are many others besides myself who are concerned about their experiences with the RBOCs and other monopolists' ability to manipulate or delay the outcome of regulatory and industry issues.

¹² Ex parte presentation by the Cellular Telecommunications Industry Ass'n, CC Docket No. 92-237 (May 23, 1995), at 2, attached to letter from George L. Edwards, President of ATIS, to Mr. William F. Caton, Secretary, Federal Communications Commission, dated June 1, 1995, Re: CC Docket No. 92-237 and IAD File Nos. 94-102 and 94-104 Ex-Parte Presentation May 23, 1995, by the Cellular Telecommunications Industry Association, attached hereto as Appendix E.

¹³ See n.10, supra.

STRUCTURAL SEPARATION IS CLEARLY IN THE PUBLIC INTEREST

14. The need for structural separation is based on the premise that structural integration of the RBOCs' and LECs' basic and enhanced services allows cross-subsidies at ratepayers' and competitors' expense and discrimination against enhanced service providers (ESPs). Integration thus is a major impediment to full development of the competitive marketplace. The RBOCs' filings in this proceeding claim, over and over again, that structural separation adds major costs to their provision of enhanced services.¹⁴ The efficiencies sought by the RBOCs, however, are typically cross-subsidies in disguise.

15. ESPs cannot compete equally unless the RBOCs treat them as the RBOCs treat themselves. Asking the Commission to require that the RBOCs cooperate to implement full, true network unbundling, as opposed to just having more industry discussions without any assurance of what network interfaces will be opened, is not unreasonable. Without such direction, my experience is that ESPs will remain uncertain as to when new capabilities will become a reality. Thus, RBOC delays will likely impede competition. Structural separation has proven to be the only possible whip to bring about such equal treatment, since the joint provision of basic and enhanced services during the past several years has been such a failure in that regard.

¹⁴ Reply Comments of Bell Atlantic, at 3, 5, and 11-13; NYNEX Reply Comments, at ii, 2, 16-17, and 23; U S West, Inc., Reply Comments at 7.

**THE RBOC REPLY COMMENTS MISREPRESENT THEIR
ORGANIZATIONAL ABILITY TO DOMINATE THE
STANDARDS AND FORUM PROCESSES**

16. The RBOCs collectively dominate standards and industry forum processes to the disadvantage of their ESP competitors. More details are provided in the affidavits of Mr. Anthony J. Toubassi, Mr. James D. Joerger, and Mr. David P. Jordan, filed herewith. Mr. Toubassi illustrates the RBOC dominance of the IILC process. Mr. Joerger addresses the reluctance of RBOCs to provide effective and timely carrier identification code service and how Bellcore serves as the RBOCs' private standards-setting organization through the use of its Technical Reference (TR)/Generic Requirements (GR) process. Finally, Mr. Jordan addresses how poorly the RBOCs design and implement fraud-control processes when they do not bear the costs of associated fraud.

17. Bell Atlantic misleadingly¹⁵ states that the statements concerning RBOC dominance of standards activities in my 1995 affidavit do not support structural separation. Bell Atlantic does not want to admit that RBOC dominance of network standards for enhanced services, and the timing of development and implementation of such standards, gives the RBOCs a real advantage. Non-structurally separated RBOC enhanced service provision allows RBOC enhanced service developers to work privately with the network developers, resulting in an RBOC time-to-market advantage over other ESPs. Structural separation discourages such practices.

¹⁵ Bell Atlantic Reply Comments at 20.

18. Bellcore claims that exchange carriers cannot dominate the standards process, since Committee T1 has four separate interest groups, only one of which is the exchange carrier interest group.¹⁶ Although Bellcore is technically correct that voting occurs at the governing T1 and T1 Advisory Group levels, this is only after all the preparatory work has been done at the working groups, which operate on “consensus,” as I stated in 1995. Consideration and resolution of concerns are sent back to the working groups, where RBOC dominance often controls the outcome.

19. USTA also denies MCI's assertion that RBOCs can dominate the standards process, by claiming that USTA is not itself dominated by RBOCs.¹⁷ It claims that “all” meetings of USTA are open to “all” USTA members. I never suggested otherwise. However, holding open meetings does not mean that the RBOCs cannot be in control. For example, they comprise most of the attendees at USTA meetings associated with industry forum positioning for the CLC, giving them effective control. The RBOCs' control of USTA is reinforced by the disproportionate amount of financial support they provide to USTA. The RBOCs' dominance of USTA was demonstrated by the massive lobbying campaign conducted by USTA concerning the federal telecommunications legislation that was passed recently. In any event, in the typical

¹⁶ Bellcore Reply Comments at 5.

¹⁷ United States Telephone Association Reply Comments, Paul K. Hart Affidavit, herein after referred to as Hart Affidavit, at ¶ 5.

regulatory context, the RBOCs' interests in maintaining the local exchange monopoly generally coincide with the interests of other LECs.

20. The RBOCs and USTA can and do work together to coordinate LEC positions and thereby dominate standards processes. On April 6, 1994, Paul K. Hart, Vice President, USTA, and CLC Chair at that time, sent a memorandum to the LEC CLC members, inviting them to the routine meeting the day before the May 5, 1994 CLC meeting. Mr. Hart chaired both the USTA preparatory meeting and the CLC meeting the following day. In his memorandum, Mr. Hart stated that the purpose of the preparatory meeting on May 4th would be "to review the agenda of the May 5th meeting in order to acquaint exchange carriers with positions on the issues to be discussed."¹⁸ Moreover, the Hart memorandum was addressed to the LEC CLC members, which are disproportionately RBOC representatives, rather than to the entire USTA membership.

21. Mainly, the RBOCs and GTE, a couple of independents, and certain forum moderators have attended the USTA CLC "LEC position acquaintance" meetings. In addition, CLC forum moderators sent by the Network Operations Forum (NOF), a CLC forum responsible for resolving operational and administrative interconnection issues, and the Industry Carriers Compatibility Forum (ICCF), a CLC forum established to resolve technical interconnection issues -- both of which moderators are Bellcore employees -- have been regular attendees of these meetings as late as 1995. Then, at the CLC, the RBOCs comprise over 70% of the attendees, on

¹⁸ USTA memorandum to LEC/CLC Members, April 6, 1994, attached as Appendix F.

average. Hence, a preparatory meeting the day before the CLC is an ideal mechanism for RBOCs to orchestrate their strategies and tactical plans, since they make up the overwhelming majority of the attendees. Having their Bellcore staff present as “moderators” reinforces their control. LEC members of the CLC will not agreed to open those moderator positions to non-LECs.

22. Despite USTA’s assertion in its reply comments that “the process is not ‘controlled’ by any type of company, including the BOCs,”¹⁹ USTA is providing a platform for the RBOCs to manipulate the forum process. MCI has no objection to industry segment meetings if their mission is pro-competitive. However, the USTA meeting prior to the CLC meetings may explain how the delay in resolving vital industry issues is orchestrated. These activities should be viewed as anti-competitive. The following are two recent examples of injuries the interexchange carriers (IXCs) have sustained as a result of these anti-competitive practices:

A. TCAP Equal Access Messaging: This issue was brought by MCI to the ICCF in an attempt to revise Bellcore requirements for SS7-based Calling Name services. After the BOCs refused to accept the issue at the ICCF, the issue was escalated to the CLC.

¹⁹ Hart Affidavit at ¶ 5.

But, at every stage of the industry forum process, the RBOCs collectively refused to address the routing of these messages on an equal access basis, claiming that the routing of Calling Name TCAP messages was a LEC "official traffic" function, and thus not subject to equal access.

B. 800 Database Call Blocking Data -- This issue has been worked since 1992 in the NOF. Our goal was to obtain industry agreement for the technical means of providing information to access customers concerning the number of blocked 800 calls. Although the RBOCs state that they "support the document" that the NOF has produced, they have refused to provide any commitment to implement the agreement.

**THE IILC PROCESS IS INADEQUATE TO ACHIEVE
TANGIBLE NETWORK UNBUNDLING RESULTS**

23. The mission of the IILC is to serve as an inter-industry mechanism for the discussion and voluntary resolution of industry wide concerns related to Open Network Architecture (ONA) and/or local network interconnection. The IILC's charter is to strive to obtain industry consensus on ONA service capabilities and the technical, operational and administrative issues associated with their provision. The problem is that the RBOCs and other LECs insist on having years of discussions without tangible results instead of keeping to a schedule tied to goals and objectives. The IILC has served the RBOCs and the other LECs well in this regard.

24. Mr. Toubassi's affidavit demonstrates that, contrary to Pac Bell's assertions,²⁰ I am not "wrong" in stating that RBOCs dominate industry forums and keep them from meeting the needs of ESPs and IXCs. It is my experience, as substantiated in the Toubassi affidavit, that the RBOCs can dominate the IILC process by coordinating joint positions on issues, despite their denials. The IILC has the charter and mission to coordinate and solve the issues associated with ONA and long term network unbundling. The RBOCs, however, need a greater incentive to cooperate and achieve this goal.

25. ATIS appropriately characterizes the problem in the IILC's Reply Comments in this docket, stating that the IILC provides the framework for industry participants to discuss issues and produce papers within the consensus process. The ATIS/IILC filing states that "consensus, whether it be as a result of the IILC's issue resolution process, or in the specific context of the IILC's Systematic Uniformity Process, is not an agreement by the participants to uniformly implement the proposed service nor the technology on a national basis."²¹ ATIS thus states the problem succinctly: without good faith negotiations and an underlying LEC commitment to implement consensus agreements, the IILC process becomes nothing more than a discussion forum. I made this point in my 1995 affidavit,²² and ATIS's comments

²⁰ Pacific Bell Reply Comments at 45.

²¹ Information Industry Liaison Committee Reply Comments at 10 (emphasis added).

²² Guggina 1995 Affidavit at ¶¶ 4-9.

confirm the nature of the problem. Simply discussing an issue is not satisfactory and will not achieve true unbundling without cooperation or regulatory requirements.

26. US West alleges that MCI's interest in this proceeding is economically motivated and that MCI seeks to use the Commission for anti-competitive ends.²³ MCI's interest in this proceeding is to create an industry environment whereby fundamental unbundling actually occurs, and not just continue years of protracted industry discussions. I do agree with US West that MCI has an "economic incentive" here. But it is an incentive to help create a competitive marketplace in which MCI and others can participate fairly, whereas US West's economic incentive is to maintain the RBOC local exchange monopoly.

27. RBOC domination of the IILC process is addressed in detail in the Toubassi affidavit. Here, I will only emphasize that RBOCs do in fact dominate that process, and that domination gives them an unfair advantage in competition with ESPs. As Mr. Toubassi points out,²⁴ the RBOC representatives to the IILC coordinate their positions before all IILC meetings. Even without such coordination, RBOC and other LEC positions towards their ESP competitors are almost inevitably similar. There are typically seven RBOCs, GTE and a couple of other LECs represented at IILC task group meetings, and only four non-LEC ESPs that actively participate in issue

²³ US West Reply Comments at 6.

²⁴ Toubassi Affidavit at ¶ 3.

resolution. Non-LECs, lacking a captive ratebase, cannot afford to “camp out” at industry fora in the same manner as the LECs. This gives the RBOCs a dominant position, whether the decision is by vote or “consensus.” While the RBOCs are only one interest group, it is the biggest and most powerful one.

28. To the extent that the RBOCs and other major LECs are not inclined to implement unbundling or take other actions that would benefit their ESP competitors, their dominant position in the ILC provides them the opportunity to prevent or delay such actions. Additionally, if the RBOCs decide that continuing to delay an issue longer at the ILC will result in the removal of the issue from their control by regulatory or other non-forum action, they may let the issue get resolved at the ILC but with no intention of ever implementing the solution. This effectively delays efforts to seek regulatory remedies, as regulatory complaints tend not to be filed or resolved while there is hope for an industry forum solution.

**THE DELAY IN PROVIDING CARRIER IDENTIFICATION INFORMATION
IS A PRIME EXAMPLE OF HOW RBOC CONTROL OF NETWORK
STANDARDS IS A MAJOR BURDEN FOR RBOC COMPETITORS**

29. The Joerger affidavit addresses in more detail the history of how the RBOCs imposed years of unnecessary delays in providing to IXCs Carrier Identification Code (CIC) information in the SS7 signaling message. That information is vital in order to provision trunk groups efficiently between LEC switches and IXC points of presence. Without LEC passing of CIC information, IXCs typically have to lease

separate additional trunk groups from the LEC to provision CIC-related services. That can be a major difference in costs to the IXC, as well as income to the LECs. Those LEC revenue benefits have motivated delays in developing standard mechanisms for providing CIC information to IXCs.

30. The situation faced by RBOC competitors has been as follows: Since 1983, the RBOCs have been delivering CIC information to IXCs, but for international calls only. The technology used for this delivery was based on the Feature Group D in-band multifrequency (MF) signaling protocol. Then, in 1988, MCI asked the RBOCs to simply expand the use of the MF technology in order to deliver CICs for domestic calls. At the time, however, plans were underway to implement the new out-of-band Signaling System 7 (SS7), and the RBOCs convinced MCI that CIC delivery using SS7 would be a superior technique and that the delay in implementing SS7 CIC delivery would not be significant, compared to the time and prohibitive costs required to modify the MF signaling protocol. MCI's assessment was that the best way to use SS7 for this purpose would be to modify the SS7 specifications by making minor changes to the Transit Network Selection (TNS) parameter, which was already designed for providing CICs for international calls.

31. The RBOCs blocked the IXCs' efforts in the standards bodies to adapt SS7 for the purpose of modifying the TNS parameter. The RBOCs insisted that an entirely new parameter had to be incorporated into the SS7 standards, the Carrier Identification Parameter (CIP). In its Reply Comments, Bellcore repeats the claim that

the CIP approach was pursued because it was technically better, and simpler.²⁵ The IXCs, however, would not have suggested TNS if it were inferior. In fact, TNS could have been implemented much more easily, which is more likely the reason the RBOCs were opposed to its use. Mr. Joerger's affidavit provides additional details.²⁶

32. Even after the adoption of CIP standards, the RBOCs threw one roadblock up after another to delay implementation. They still have not committed to ubiquitous implementation of the CIP technology that they selected in the standards process. MCI and the other IXCs have, after over seven years of effort, no assurance that they will have ubiquitous access to information which could have been provided years ago in early SS7 deployment.

33. This dismal history supports MCI's contention that structural separation is necessary to provide fair treatment for entities that compete with RBOCs in competitive services of any kind requiring modification of RBOC network capabilities.

THE RBOCs' FAILURE TO IMPLEMENT FRAUD PREVENTION TECHNIQUES IS ANOTHER EXAMPLE OF HOW THEY DISTORT THE FORUM AND STANDARDS PROCESSES TO THEIR OWN ADVANTAGE.

34. The RBOCs have used their dominant control of both the forums and standards processes to delay effective fraud prevention techniques. Also, they

²⁵ Bellcore Reply Comments at 7.

²⁶ Joerger Affidavit at ¶¶ 14-19.

often do not implement the few solutions that they have agreed upon in the standards forums. The Jordan Affidavit discusses in more detail the RBOCs' behavior in connection with certain fraud prevention techniques that could have been implemented quickly with RBOC cooperation, but were not. If these fraud costs were borne by the RBOCs and other LECs, fraud controls would have been implemented long ago. Instead, the RBOCs have succeeded in delaying or preventing many feasible solutions by their dominant control of the industry forums that deliberate fraud issues.

35. When IXCs have access to the information and potential mechanisms for preventing fraud, those mechanisms are typically implemented quite quickly and effectively. However, the lack of corresponding LEC efforts results in major IXC fraud losses. It is disturbing to note that the majority of IXCs' preventable fraud losses are associated with LEC access products and not with IXC calling cards and other IXC-controlled products.²⁷

36. The major gap in the RBOCs' efforts to prevent fraud associated with their products is simply their failure to provide related information to the IXCs that carry long distance calls. Call forwarding is a prime example: The LECs typically do not provide IXCs with information that the call has been forwarded. This is complicated further when the scenario involves remote call forwarding.

²⁷ Jordan Affidavit at ¶¶ 16, 27.

37. An IXC still must pay access charges to the originating and terminating LECs in connection with fraudulent long distance calls, even though it does not get paid for the fraudulent calls. The IXC would be in a much better position to prevent or at least limit such illegitimate calls if it knew that the calls were forwarded and that customer remote access to the call forwarding feature were available.

38. The RBOCs determine the outcome of fraud-related issues deliberated by the Toll Fraud Prevention Committee (TFPC),²⁸ an industry forum under the ATIS-sponsored CLC. The TFPC's mission is to develop industry-wide mechanisms for preventing telecommunications fraud. The RBOCs dominate the TFPC decision process, dilute the effectiveness of recommendations, and often do not implement the recommendations that they themselves have approved. Pacific Bell provides a typical example of making TFPC agreements but not following through with implementation. Pacific Bell states that it is still studying the "feasibility"²⁹ of two TFPC-approved Call Forwarding recommendations. It is disturbing that Pac Bell did not study the feasibility of the recommendations before they were finalized, and then proceed with implementation.

²⁸ Id. at ¶¶ 8-9.

²⁹ *Pacific Bell Reply Comments* at 58.

39. Pacific Bell has suggested that IXCs upgrade their networks to control fraud that is caused by Pacific Bell defective access products.³⁰ Pac Bell's suggested fix involves using non-uniform RBOC information, which in itself presents a very onerous and possibly impossible scenario. Even if the Pacific Bell proposal would work, it would only be effective as long as the RBOCs provide switch-based call forwarding service. It should be noted that RBOCs are rapidly moving to an Advanced Intelligent Network (AIN) platform structure for such services, which, by nature, is not totally switch-based. It is my understanding that the AIN plan uses the existing SS7 systems and does not include a means to inform an IXC that a call has been forwarded. So, even if we could get Pacific Bell's proposal to work, it would likely be nullified by AIN.

40. U.S. West provides another typical example of the unwillingness of RBOCs to address fraud problems when other entities bear the cost of the fraud. The Arizona Public Utilities Commission staff recommended that U.S. West modify its call forwarding service tariff proposal, implement the relevant TFPC recommendations, and indemnify IXCs for any access charges associated with fraudulent calls and their call forwarding product. US West simply withdrew its tariff proposal. Rather than take responsibility for preventing the related fraud or even compensating the victims of such

³⁰ Id. at 60.